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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/631,576	08/04/2000	Larry W. Blake	TEKIA.002A	1860
20995	7590	02/22/2005	EXAMINER	
KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614			BLANCO, JAVIER G	
			ART UNIT	PAPER NUMBER
			3738	

DATE MAILED: 02/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/631,576

**Applicant(s)**

BLAKE, LARRY W.

**Examiner**

Javier G. Blanco

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 January 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 40,51-72,74,75 and 77-81 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 40,51-53,56-61,67-69,74,75 and 77-81 is/are rejected.
- 7) ☒ Claim(s) 54,55,62-66 and 70-72 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on January 25, 2005 has been entered.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 40, 51-53, 56, 67-69, 74, 75, and 79 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Poler (US 4,434,515; previously cited by the Examiner).

With specific reference to Figures 1-6, Poler teaches an attachment for a two-part IOL comprising at least two cleats (hooks 18-21) on the haptic (Figure 2: element 11) extending generally in the direction of the plane of the haptic, and at least two eyelets (apertures 16 and 17) on the optic (10 + 12) allowing each of said cleats to firmly attach to one of said eyelets on the optic (see column 2, line 61 to column 3, line 7). Another possible interpretation is to consider the distal ends of legs 27, 28 as the eyelets on the optic (10 + 12), and legs 25, 26 as the cleats on

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the haptic (11). Element 11 comprises a pair of hinges at its distal ends. Said two-part IOL *is configured to* (emphasis added) pass completely (or separately) through a small opening without folding the haptic. Although Poler is silent as to the particular material of lens 10, it would have been obvious to have selected a lens made from silicone or hydrogel because these kind of optic materials were already accessible to one of ordinary skill in the art and provide advantages such as biocompatibility, softness, ease of folding, etc.

4. Claims 40, 51-53, 56, 67-69, 74, 75, and 77-79 rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Lecoq (FR 2 770 394; previously cited by the Examiner).

With specific reference to Figures 3 and 5-13, Lecoq teaches an attachment for a two-part IOL comprising at least two cleats (anchoring tabs 24) on the optic (made of silicone or similar material) extending generally in the direction of the plane of the optic, and at least two eyelets (radial grooves 22) on the haptic (made of PMMA) allowing each of said cleats to firmly attach to one of said eyelets on the haptic. Said two-part IOL *is configured to* (emphasis added) pass completely (or separately) through a small opening without folding the haptic (see entire document).

Lecoq does not particularly disclose the radial grooves 22 as “eyelets”. It should be noted that the Applicant admits in the present application that cleats 300 are attached to “slots, eyelets, apertures, or notches 400” (see page 13, lines 20-21; see Figures 8B and 8E). At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to have attached said cleats to corresponding slots, eyelets, apertures, or notches because Applicant has not disclosed that the exclusive use of eyelets provides an

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advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected any of these designs (i.e., slot, eyelet, aperture, or notch) to perform equally well with a cleat as long as the cleat will firmly attach to the corresponding slot, eyelet, aperture, or notch. Also, the incision required for insertion would still be minimal.

Lecoq discloses the claimed invention except for particularly disclosing the haptic rather than the optic having the cleats. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have added cleats to the haptic and eyelets to the optic, since it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art. *In re Einstein*, 8 USPQ 167.

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 57 and 58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lecoq (FR 2 770 394; previously cited by the Examiner).

Lecoq teaches the claimed invention except for particularly disclosing KAPTON or polyphenylsulfone (PPSU) as the haptic material. It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have used said materials, since it has been held to be within the general skill of a worker in the art to select a known material on

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the basis of its suitability of the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

7. Claims 59-61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lecoq (FR 2 770 394; previously cited by the Examiner).

Lecoq teaches the claimed invention except for particularly disclosing the modulus ranges set forth in claims 59-61. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the haptic with a particular modulus (e.g., 100,000 to about 500,000 psi/inch) since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

#### ***Response to Arguments***

8. Applicant's arguments (filed January 25, 2005) with respect to claims 40 and 77-79 have been considered but are moot in view of the new ground(s) of rejection.

#### ***Allowable Subject Matter***

9. Claims 54, 55, 62-66, and 70-72 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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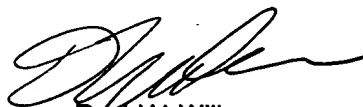
***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Javier G. Blanco whose telephone number is 571-272-4747. The examiner can normally be reached on M-F (7:30 a.m.-4:00 p.m.), first Friday of the bi-week off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on (571) 272-4754. The fax phone numbers for the organization where this application or proceeding is assigned is 703-872-9306 for regular communications and After Final communications. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

JGB

February 15, 2005

A large, stylized handwritten signature, likely of the examiner Javier G. Blanco, consisting of a large 'J' and 'B' intertwined.A handwritten signature in cursive script, likely of David H. Willse.  
**David H. Willse**  
**Primary Examiner**